

fornia State University, Fresno; and the California State University, Fresno Athletic Corporation, their officers, agents, and employees, from and against any and all claims, liabilities, and damages accruing or resulting to any and all contractors, subcontractors, materialmen, laborers, and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of the contract, and from any and all claims, liabilities and damages accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractors in the performance of the contract.

3. Contractors shall hold the Corporation and California State University, Fresno, harmless to perform under this agreement due to acts of God or labor strikes.
4. Contractors and the agents and employees of Contractors in performance of this agreement shall act in an independent capacity (and as an independent contractor) and not as officers or employees or agents of the Corporation.

R. NOTICES

All notices herein required to be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed as herein provided. Notice to the Contractors shall be addressed to the Contractors at Contractors' address set forth on the signature page hereof. Notice to the Corporation shall be addressed to Les Snyder, Jr., General Manager, California State University, Fresno Athletic Corporation, at the Corporation's address set forth on the signature page hereof.

S. AGREEMENT ASSIGNABLE

Attached hereto is an addendum to agreement which delineates the division of responsibilities as between the two (2) Contractors, CALIFORNIA SPORTS NETWORK and PAPPAS TELECASTING, INCORPORATED, licensee of KMPH TELEVISION. Corporation accepts the terms of said addendum to agreement.

In the event of default by the CALIFORNIA SPORTS NETWORK in the payment of sums due as set forth in said addendum to agreement or in making, performing and keeping any of the terms and conditions hereof, this Agreement may be terminated by ten (10) days prior written notice by Corporation to CALIFORNIA SPORTS NETWORK, provided, however, that CALIFORNIA SPORTS NETWORK shall have the right to cure any default if it is curable, within the ten (10) day period after the giving of notice. Upon the occurrence of a default and subsequent termination by Corporation of CALIFORNIA SPORTS NETWORK's rights hereunder, then Corporation shall assign the remaining telecast rights to PAPPAS TELECASTING, INCORPORATED

for performance as exclusive Contractor for the term remaining under the Agreement. Provided, however, that PAPPAS TELECASTING, INCORPORATED shall in no way be liable for any costs, expenses, fees, etc. due by CALIFORNIA SPORTS NETWORK to Corporation. ~~Corporation will indemnify and hold harmless PAPPAS TELECASTING, INCORPORATED and licensee KMPH TELEVISION, its officers, stockholders, agents and employees from any and all costs, expenses, liabilities, etc. that may arise as a consequence of the termination by Corporation of CALIFORNIA SPORTS NETWORK's rights hereunder.~~ Further, it is understood that in the event that Corporation terminates CALIFORNIA SPORTS NETWORK's rights hereunder, as specified in the addendum attached hereto, PAPPAS TELECASTING, INCORPORATED shall, upon assuming CALIFORNIA SPORTS NETWORK's rights specified in said addendum, faithfully and fully perform and discharge all of CALIFORNIA SPORTS NETWORK's obligations from and after the date of assumption through to the end of the Term of this Agreement.

T. MODIFICATION OF AGREEMENT

No alteration or variation of the terms of the contract shall be valid unless made in writing and signed by the parties to the contract, and no oral understanding or agreement not incorporated in the contract shall be binding on either parties of the contract.

U. TERMINATION OF AGREEMENT: LIQUIDATED DAMAGES

1. In the event of failure to perform any of the covenants, terms, or conditions herein contained at the time and in the manner provided, Corporation may cancel this agreement upon giving the Contractors ten (10) days written notice of such termination.
2. It shall be the responsibility of the Contractors to broadcast each sporting event at home or away as stipulated in Paragraph B. Failure to broadcast an event, except for preemption of circuits due to national emergencies or public interest network broadcasts, technical difficulties beyond the control of the Contractors, labor disputes, acts of God, or unforeseen travel arrangement problems on away games, will constitute cause for cancellation of this contract, with liquidated damages to be paid to the Corporation equal to the pro-rated Annual Rights Fee due for each failure to broadcast an event in the contract year.
3. Since each of the parties hereto is acting as an independent contractor and has entered into a separate agreement delineating the responsibilities of this contract, which is attached hereto as an addendum, it is hereby understood that Corporation shall not be held liable for any costs incurred in litigation between the two (2) Contractors to this agreement.

V. TIME OF THE ESSENCE

Time is of the essence of the contract.

W. EXECUTIVE ORDER NO. 11246 AND SECRETARY OF LABOR REQUIREMENTS

Contractors shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor regarding equal opportunity.

X. SIGNATURE PAGE

IN WITNESS WHEREOF, this agreement has been executed by the parties here-to as of the day and year first above written.

CONTRACTORS

CALIFORNIA SPORTS NETWORK

By: 

Howard Zuckerman

Title: President

Address: 5361 Blanco Avenue
Woodland Hills, CA 91367

and 9028 Sunset Blvd. Suite 200
Los Angeles, Ca. 90069

PAPPAS TELECASTING, INCORPORATED
Licensee of KMPH-TV

By: 

Harry Pappas

Title: President and Owner

Address: 5111 East McKinley
Fresno, CA 93727

CORPORATION

CALIFORNIA STATE UNIVERSITY, FRESNO ATHLETIC CORPORATION

By: 

Gaylord D. Graham

Title: Chairman of the Board

Address: Athletic Corporation
California State University, Fresno
Fresno, CA 93740

ADDENDUM

This Addendum is made and entered into this first day of July, 1985, in connection with that certain Television Broadcasting Agreement dated the first day of July, 1985, by and between the California State University, Fresno Athletic Corporation, a California Nonprofit Corporation, hereinafter called the "Corporation", and California Sports Network, a California Corporation, hereinafter after referred to as "Producer-Contractor", and Pappas Telecasting Incorporated, a California Corporation, Licensee of KMPH Television, hereinafter referred to as "Station-Contractor".

WITNESSETH:

WHEREAS, Producer-Contractor and Station-Contractor, as parties to the Television Broadcasting Agreement (hereinafter "Agreement") wish to define their separate responsibilities to perform under said Agreement; and

WHEREAS, Producer-Contractor and Station-Contractor and Corporation agree that each is acting as an independent contractor and not as a joint venturer or co-partner; and

WHEREAS, it is necessary to clarify the responsibilities under certain circumstances, including default by Producer-Contractor, of the remaining parties to the said Agreement;

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. PRODUCTION RESPONSIBILITIES

Producer-Contractor shall be responsible for all expenses associated for production of an air-ready telecast of the Broadcast Events as described on Page 2, Paragraph B of the Agreement, as more particularly defined herein. This shall include, without limitation, all costs for rights fees as defined in Paragraph E of the Agreement, talent fees, satellite innerconnection costs, mobile production facilities, crew charges, producer director charges, and any and all other expenses associated with the creation of a finished product, as generally understood in the television production and broadcasting industry, ready for air by Station-Contractor.

2. APPROVAL OF PRODUCTION PERSONNEL

A. Page 3, Paragraph F (1), (PERSONNEL), Paragraph 1, is modified to state as follows, "All production personnel shall be mutually agreed upon by Corporation, Producer-Contractor and Station-Contractor, provided, however, that all compensation and related costs therefor shall be borne exclusively by Producer-Contractor."

B. Paragraph F (2) of Page 3 is hereby modified to read as follows, "Producer-Contractor and Station-Contractor shall mutually agree upon talent to be utilized as on-air sportscasters and color announcers at least forty-five (45) days prior to the first telecast of the particular

sport. Producer-Contractor and/or Station-Contractor shall, within thirty (30) days prior to the telecast of the particular sport, inform Corporation, in writing, of the names of prospective on-air sportscasters and color announcers for approval by Corporation, which said approval shall not be unreasonably withheld.

3. PRODUCTION FEES, EXPENSES

The parties hereto agree that Paragraph G (2) of the Agreement relates to responsibilities of Station-Contractor. The language of Paragraph G (2) of the Agreement is deleted and replaced with the following:

"Station-Contractor shall provide fifty (50) hours of no-cost studio production time per year to Corporation to be utilized at Corporation's discretion; provided, however, that Corporation shall provide at least one week's prior notice to Station-Contractor of its desire to utilize said available time and provided, further, that said time is then not previously committed for other uses. Station-Contractor shall determine when this no-cost production time may be used by Corporation. If sufficient notice as herein described has not been given by Corporation to Station-Contractor and/or if other users of Station-Contractor's production facilities have previously reserved time, it is understood by Corporation and agreed by Corporation that Station-Contractor will not be held liable for failure to provide time as requested. The foregoing notwithstanding, however, Corporation shall, within each year of this Agreement, be entitled to receive, and shall receive, up to the fifty (50) hours of no-cost studio production time during normal business hours. Studio production time does not include props, talent, art work, writing or other such services. It is the intent of this paragraph that Corporation shall have available to it facilities located at the premises of Station-Contractor at 5111 East McKinley Avenue, Fresno, including two studio production cameras, a production studio, half-inch or one-inch video tape recorders, half-inch or one-inch tape editing facilities, character generator services and the labor to man the foregoing.

4. FEEDS, TELECAST SALES

A. Station-Contractor agrees that Producer-Contractor shall be entitled to the full amount of the 50% of rights fees negotiated referred to in Paragraph H of the subject Agreement. It is also understood that production costs paid by other parties that remain 100% of the property of Contractors, as referred to in the Agreement, shall mean that Producer-Contractor shall be entitled to the full amount thereof.

5. ADDITIONAL PRODUCTION

Producer-Contractor agrees that it shall be solely responsible for all costs associated with performing in accordance with Paragraph I, "ADDITIONAL PRODUCTION" of the Agreement for those services described in I (1) A & B; I (2).

Station-Contractor agrees that it shall be solely responsible for all costs associated with performing to Paragraph I (3), I (4) and I (5) of the Agreement.

6. PROMOTIONAL AIDS

Producer-Contractor and Station-Contractor shall share the cost 50/50 of those items referred to in Paragraph J (3) and (4), entitled "PROMOTIONAL AIDS" of the Agreement.

7. GUIDLINES

The parties hereto agree that Paragraph N (4) of the Agreement is modified by striking the last sentence thereof and substituting the following language: "If Station-Contractor has refused an additional telecast, then Corporation may request and arrange and be responsible for additional, delayed telecasts of said events by means of cable television, and in that event, Producer-Contractor will supply, at no cost to Corporation, duplicated on video tape, a minimum of five (5) duplicate tapes. It is understood by Corporation that Station-Contractor and/or Producer-Contractor's agreement with talent may require that additional telecasts of events, as contemplated by this paragraph, may result in the imposition of additional fees due to those persons who have appeared as talent in the telecast. Therefore, Corporation agrees that should additional talent fees be payable for telecasts not made on Station-Contractor, then Corporation will be responsible for payment thereof."

7. INDEPENDENT CONTRACTORS

Station-Contractor and Producer-Contractor are each acting in an independent capacity, as independent contractors and not as officers, employees, or agents of one another. Except as specifically described herein, neither Producer-Contractor nor Station-Contractor are jointly and severally responsible for keeping or performing any of the covenants, terms and conditions herein contained.

8. CORPORATION'S ACKNOWLEDGMENT OF INDEPENDENT CONTRACTOR'S STATUS

Since each of the parties hereto is an independent contractor, Corporation agrees that it shall only hold responsible that party which has failed to perform any of the covenants, terms or conditions herein contained and any notice of termination to either Producer-Contractor or Station-Contractor will describe the reasons therefor and make reference to the language of this Contract.

9. CHOICE OF TALENT

Producer-Contractor agrees that Station-Contractor shall have the right to review and approve the choice of talent and the terms of talent contracts prior to the execution thereof by Producer-Contractor with talent. Producer-Contractor agrees that a clause shall be included in said talent contracts to the effect that if Producer-Contractor defaults under this Agreement and/or Corporation terminates Producer-Contractor's rights hereunder, that the talent contracts shall be assumable, at Station-Contractor's option, in case of such default by California Sports Network, Inc.

10. COORDINATION AND PLANNING FACILITIES AVAILABILITY

Producer-Contractor agrees to coordinate with technical staff and station management, traffic department, promotion department and program department of Station-Contractor at all times sufficiently in advance so as to permit the orderly planning and execution of all rights and responsibilities of Producer-Contractor and Station-Contractor under this Agreement. Producer-Contractor shall provide satisfactory evidence to Station-Contractor's technical staff or management sufficiently in advance of a planned telecast date that production facilities, talent, satellite transponder time, uplink facilities, etc. are reserved and committed sufficiently in advance so as to assure the orderly planning and telecast of each event.

11. COMMERCIAL TIME SHARING

There will be a total of 30 minutes of commercial time telecast within each football game and 22 minutes of commercial time telecast within each basketball game. Producer-Contractor shall retain 11 minutes of time in each basketball game for its sale and 15 minutes of time within each football game for its sale. Station-Contractor will retain the rights to the remaining minutes of telecast time in each sporting event for its sale. Other sporting events broadcast time is to be split 50/50 between Producer-Contractor and Station-Contractor. Producer-Contractor shall receive said broadcast time as its sole consideration for providing its services hereunder and shall be entitled to retain all the proceeds from the sale of broadcast time reserved to Producer-Contractor. In consideration of providing telecast time for the events to be telecast of Corporation, as produced by Producer-Contractor and the commercials provided by Producer-Contractor, Station-Contractor shall be entitled, as its sole compensation for providing the foregoing services, to retain all revenues from the sale of broadcast time reserved to it. Producer-Contractor agrees to provide necessary media at least twenty-four (24) hours in advance of scheduled telecast time of any event herein contemplated as well as scheduling instructions in writing. Station-Contractor will not be responsible for any failure of Producer-Contractor to sell said time or failure of Producer-Contractor to timely deliver video tapes or other means for transmitting commercials of clients to whom Producer-Contractor has sold its allotment of advertising time.

12. CANCELLATION

Willful and repeated failure of Producer-Contractor to observe and maintain the foregoing conditions described in the foregoing paragraphs shall be cause for cancellation by Station-Contractor of its Agreement with Producer-Contractor. Station-Contractor shall provide Producer-Contractor with ten (10) days written notice of such a default and if curable, Producer-Contractor may cure said defaults and the contract will continue in force and effect. However, if the default is not curable or, if Producer-Contractor fails to cure, or if an event of default has occurred by which Corporation has terminated the rights of Producer-Contractor hereunder, then in that event Station-Contractor may, at its option, after giving such notice of default, and it not being cured or curable, as the case may be, assume the rights of Producer-Contractor under this Agreement as between Producer-Contractor and Corporation for the period of time from and after the effective date of termination through the remaining term of this Agreement. Provided further that Station-Contractor shall not be liable for Producer-Contractor in any event and will not assume liabilities for acts or omissions of Producer-Contractor prior to the date of termination to any parties specifically including, but not limited to, Corporation, talent, production personnel, facilities providers and the like.

13. GENERAL

A. This Addendum and the Agreement to which it is appended supersedes and replaces all other agreements, oral or written, express or implied and represents the sole agreement of the parties hereto.

B. This Agreement shall be construed under and enforced in accordance with the laws of the State of California. The parties hereto agree that venue for any action to compel performance or interpret any provision of this Agreement shall be Fresno County, California.

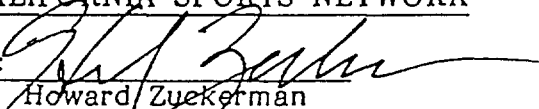
* SEE FOLLOWING PAGE FOR EXCLUSIVITY.

14. SIGNATURE PAGE

PRODUCER-CONTRACTOR

CALIFORNIA SPORTS NETWORK

By:


Howard Zuckerman

Title: President

Address: 5361 Blanco Avenue
Woodland Hills, CA 91367

And: 9028 Sunset Blvd., Suite 200
Los Angeles, CA 90060

STATION-CONTRACTOR

PAPPAS TELECASTING INCORPORATED
Licensee of KMPH-TV

By:



W. EXECUTIVE ORDER NO. 11246 AND SECRETARY OF LABOR REQUIREMENTS

Contractors shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor regarding equal opportunity.

X. SIGNATURE PAGE

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto as of the day and year first above written.

CONTRACTORS

CALIFORNIA SPORTS NETWORK

By: 

Howard Zuckerman

Title: President

Address: 5361 Blanco Avenue
Woodland Hills, CA 91367

and 9028 Sunset Blvd. Suite 200
Los Angeles, Ca. 90069

PAPPAS TELECASTING, INCORPORATED
Licensee of KMPH-TV

By: 

Harry Pappas

Title: President and Owner

Address: 5111 East McKinley
Fresno, CA 93727

CORPORATION

CALIFORNIA STATE UNIVERSITY, FRESNO ATHLETIC CORPORATION

By: 

Gylford O. Graham

Title: Chairman of the Board

Address: Athletic Corporation
California State University, Fresno
Fresno, CA 93740

Address: 5111 East McKinley Ave.
Fresno, CA 93727

CORPORATION

Acknowledged and Agreed to by:

CALIFORNIA STATE UNIVERSITY, FRESNO ATHLETIC CORPORATION

BY: 

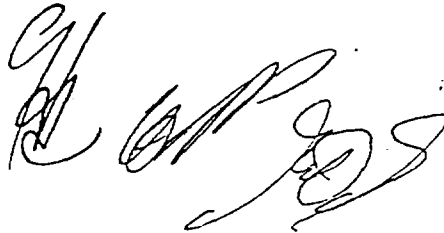
Gaylord O. Graham

Title: Chairman of the Board

Address: Athletic Corporation
California State University, Fresno
Fresno, CA 93740

* EXCLUSIVITY:

THE PARTIES HERETO AGREE THAT NO
OTHER TELEVISION MEDIUM SHALL BE
LICENSED TO CARRY OR BROADCAST THE
EVENTS CARRIED BY STATION- CONTRACTOR
PURSUANT TO THE RIGHTS GRANTED BY THIS
AGREEMENT WHEN SUCH MEDIUM WOULD
CARRY OR TELECAST SUCH EVENTS INTO
OR WITHIN THE "AREA OF EXCLUSIVITY"
DESCRIBED IN PARAGRAPH A. I OF THE
AGREEMENT.





FRESNO STATE UNIVERSITY

Department of Athletics
Fresno State University
Fresno, CA 93740
(209) 294-2644

March 4, 1991

RECEIVED
MAR 07 1991

KMPH TV
ADMINISTRATION

TO: Mr. Harry Pappas
Mr. Bon Abercrombie

FROM: California State University,
Fresno Athletic Corporation

RE: 1991-92 Television Broadcast Agreement

As a follow-up to our meeting one week ago today, the following outlines our discussions regarding a possible format for the continuation of our television agreement.

At this point, our conversations have brought us to the following:

KMPH TO PROVIDE THE FOLLOWING TO FRESNO STATE:

1. In-Game Inventory

a) Football	15 units @ \$985 6 games	\$ 14,775/game 88,650/season
b) Basketball	10 units @ \$700 15 games	\$ 7,000/game 105,000/season
c) FSU permitted to sell and package other in-game sponsorships such as graphic displays, etc.		Value Established By Fresno State

2. Halftime Inventory

a) Football	6 min./game 36 min./season	Value Established By Fresno State
b) Basketball	6 min./game 90 min./season	Value Established By Fresno State

3. Rights Fee \$ 40,000/1991-92

4. Continued purchase of program ads at published rates. KMPH may use to promo sponsors \$ 2,800/1991-92

5. Pro-rated rights fee for additional telecasts plus above listed event inventory

6. Fifty/fifty split of all rights fee revenue generated by split telecasts which are to be initiated by and contracted through FSU

7. For any returned inventory from FSU which KMPH subsequently sells, FSU will receive 50% of net after sales/agency commissions
9. Production of necessary elements for FSU controlled halftime programming sponsorships
10. Production of four (4) :30 commercials for various FSU needs (eg. Season tickets, options, institutionals)
11. All video and related production of one all-sport recruiting tape
12. Continuation of postgame coaches shows for televised games in the sports of football and basketball \$ 20,000 Total
1991-92
13. KMPH responsible for all telecast production costs and talent fees. FSU retains right of approval for telecast talent
14. Utilizing a produced promotional spot, provide unsold commercial air-time (minimum of 15 :30's) prior any unsold home football game. KMPH will attempt to the best of their ability to provide at least 5 :30's between the hours of 8:00 p.m. and 11:00 p.m. KMPH will provide affidavits.

In Exchange For the Afore Mentioned, FSU will provide:

1. Continued parking and credential benefits
2. A tailgate space at no charge
3. Four (4) 4' x 8' banners for use at televised events
4. Meals/lodging for crew for home events (12-15 people, approx. 6 events at \$300-400 maximum value) FSU to determine appropriate number of meals per day depending on arrival time of crew into Fresno. FSU to determine lodging location.
5. Continued trade for promotional air-time for two (2) FSU football media packages (which include worthy group tickets donated back to FSU) which will net KMPH at leastt 100 football season tickets. No selection of more tickets to certain games is allowed, all issued as season tickets.
6. Allow KMPH to hang one (1) banner at non-televised home games
7. Allow KMPH to promote, in advance, all games scheduled to be televised as part of this agreement - does not included additionally negotiated contests

8. A one (1) year contract with a two (2) year option. Options may be awarded on a one or two-year basis and there will be an opportunity to modify after each year based on mutual consent. This allows both parties to sell multiple year contracts with sponsors, while providing an opportunity to review and fine tune any hitches that arise from this new arrangement.
9. KMPH retains the right to sell to the following sponsors:
 1. Taco Bell
 2. Unocal (already sold)
 3. Any other 1990-91 advertisers not involved with Fresno State or mentioned in Paragraph 10.
10. Fresno State retains the right to sell the following sponsors: Pepsi, Carl's Jr., Heppner Iron & Metal, Texaco, Payless, Longs Drugs, Pacific Bell Smart Yellow Pages, other FSU sponsors not 1990-91 advertisers on KMPH.

If you do not have any further concerns or questions at this time, you may sign this document in the space provided and we will consider to have established a working agreement for the purpose of allowing the package sales to begin. This, of course, is not the final contract. It will be necessary to draw up the legal documentation within the next 45 days to formally consummate our continued relationship.

WORKING AGREEMENT

On behalf of Pappas Telecasting, Inc. (dba: KMPH Fox/26 Television), I hereby accept the above terms and conditions for the purpose of establishing a temporary working agreement by and between the California State University, Fresno Athletic Corporation and Pappas Telecasting, Inc./KMPH Fox/26 Television.

By: LeBon G. Abercrombie

Printed Name: LEBON G. ABERCROMBIE

Title: VP/KM

Date: 3/1/91

On behalf of the California State University, Fresno Athletic Corporation, I hereby accept the above terms and conditions for the purpose of establishing a temporary working agreement by and between Pappas Telecasting, Inc. (dba: KMPH/Fox 26 Television) and the California State University, Fresno Athletic Corporation.

By: Les Snyder Jr.

Les Snyder Jr.
General Manager
California State University, Fresno
Athletic Corporation

Date: March 5, 1991

by hand to the offices of the addressee.

(XX) STATE. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(XX) FEDERAL. I declare that I am employed in the office of a member of the Bar of this court at whose discretion the service was made.

Dated this 18th day of February, 1994.

A handwritten signature in cursive script, appearing to read "Dottie Fowler", is written over a horizontal line.

Dottie Fowler

RECEIVED

MAY 31 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL
FILED

FEB 14 1994

CLERK, U. S. DIST. COURT
Eastern District of California

Gary E. Cripe, Bar No. 076154
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2436 N. Euclid Avenue
Suite 5
Upland, California 91786
(909) 981-5212

Attorneys for Plaintiff
PAPPAS TELECASTING, INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAPPAS TELECASTING, INC. a,
California corporation, and as
Public Trustee,

Plaintiff,

v.

PRIME TICKET NETWORK, a
California Limited Partnership,
CVN, INC., a Corporation,
The PACIFIC-10 CONFERENCE, a
California Non-Profit
Association, CAPITAL CITIES/ABC,
INC., a Delaware Corporation,
ESPN, INC., a Corporation,
ABC SPORTS, INC. a New York
Corporation, and DOES 1 through
20, inclusive,

Defendants.

CASE NO. CV-F 92-5589-OWW

MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
DEFENDANT PAC-10 CONFERENCE'S
SUMMARY JUDGMENT MOTION

DATE: March 7, 1994
TIME: 10:00 A.M.
ROOM: 2

Honorable Oliver W. Wanger

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27	<u>Restatement of Contracts</u>	
28	Section 201(2).	16

1	<u>Restatement of Contracts 2d</u>	
	Section 19	15
2	Section 222(1).	16
	Section 223.	16
3		
	Williston 3d	
4	Section 660.	16
5	Witkin, 2 Cal.Evidence, 3d	
	Section 984.	16
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I

INTRODUCTION

This case concerns an issue considered to be of such vital concern in the antitrust context that Congress, in Section 26 of the Cable Act of 1992, specifically directed the Federal Communications Commission ("FCC") to undertake a comprehensive study of the matter and to issue reports to Congress on or before July 1, 1993, and July 1, 1994. The FCC was directed to conduct an ongoing study "on the carriage of local, regional, and national sports programming by broadcast stations, cable programming networks and pay-per-view services."¹ Of particular concern to Congress was the effect of preclusive contracts in this unique area of interstate commerce. Consequently, Congress required the FCC to analyze the operation and effect of such contracts:

"(c) (1) Analysis required.--In conducting the study required by subsection (a), the Commission shall analyze the extent to which preclusive contracts between college athletic conferences and video programming vendors have artificially and unfairly restricted the supply of the sporting events of local

¹ Among other issues, the study is directed at investigating and analyzing "trends in the migration of such programming from broadcast stations to carriage over cable programming networks and pay-per-view systems, including the economic causes and economic and social consequences of such trends." 47 U.S.C. Section 521, Historical and Statutory Notes. [Emphasis added]

1 colleges for broadcast on local television
2 stations. In conducting such analysis, the
3 Commission shall consult with the Attorney
4 General to determine whether and to what
5 extent such preclusive contracts are
6 prohibited by existing statutes.²
7 47 U.S.C. Section 521(C)(1)(a). [Emphasis
8 added]

9 In carrying out this Congressional mandate, the FCC has
10 already released, as of July 1, 1993, an Interim Report.³ The
11 FCC deemed the information received as of that date to be
12 inadequate to formulate specific findings and recommendations to
13 Congress (Cripe Dec. Exhibit 3, ¶75, p. 34), the Commission
14 acknowledged the concern that contracts between video programming
15 vendors⁴ and various college football conferences, such as

16
17 ²
18 Congress also defined the term "preclusive contract":
19 (2) Definition.--For purposes of this subsection, the
20 term 'preclusive contract' includes any contract that
21 prohibits--

22 (A) the live broadcast by a local television
23 station of a sporting event of a local college team
24 that is not carried, on a live basis, by any cable
25 system within the local community served by such local
26 television station; or

27 (B) the delayed broadcast by a local television
28 station of a sporting event of a local college team
29 that is not carried, on a live or delayed basis, by any
30 cable system within the local community served by such
31 local television station.

32 47 U.S.C. Section 521(c)(2). [Emphasis added]

33 ³ Please see Declaration of Gary E. Cripe "Cripe Dec."
34 Exhibit 3.

1 Defendant PAC-10 and non-defendant, co-conspirators Big-10 and
2 CFA, and contracts between such conferences and Defendant ESPN,
3 (80% of which is owned by Defendant CAP CITIES/ABC⁵), have
4 "artificially and unfairly restricted the supply of the sporting
5 events of local colleges for broadcast on local television
6 stations." The Commission therefore stated that "such contracts
7 are directly relevant to our Congressionally mandated analysis of
8 preclusive contracts and will be carefully evaluated." (Cripe
9 Dec. Exhibit 3, p. 34, ¶74) The very contracts which are
10 currently under review by the FCC are those which are at issue
11 here. The United States Congress believes that there is "a
12 question of fact".

13 II

14 FACTS

15 A. DEFENDANTS' DOMINANCE OF THE MARKET 16 AND CONTRACTUAL RELATIONSHIPS.

17 In order to understand the anti-competitive nature of
18 the preclusive contracts at issue here, it is first necessary to
19 understand the entwined contractual history between the named
20 Defendants and unnamed co-conspirators in the video programming
21 market for live college football.⁶

22 ⁴ "Video programming vendors" includes any provider of video
23 programming, Cripe Dec. Exhibit 3, p. 34, ¶74.

24 ⁵ Answer of Capital Cities/ABC, Inc. and ABC Sports, Inc. to
25 Plaintiff's First Amended Complaint, p. 4, ¶ 8, ll. 3-9,
Cripe Dec, Exhibit 5.

26 ⁶
27 The matters set forth herein, in some instances, are taken from
28 the allegations of the Second Amended Complaint ("S.A.C.").
Since Defendant PAC-10 elected to move for summary judgment at

1 For at least 29 consecutive years, Defendants CAP
2 CITIES/ABC and ABC Sports ("ABC") have broadcast college football
3 games over the ABC Television Network pursuant to various
4 contracts with the NCAA, its member universities, and conferences
5 such as the PAC-10, BIG-10 and others, and the CFA. For many of
6 these 29 years, pursuant to exclusive agreements with the NCAA,
7 ABC, was the only major television network televising college
8 football. By virtue of its size and historical prominence in
9 television coverage of college football, ABC has held and
10 continues to hold a dominant position in the market for
11 telecasting of college football. (S.A.C., ¶36.)

12 ABC enhanced its dominant market position by its
13 acquisition of Defendant ESPN in or about 1983. ESPN, which was
14 formerly an independent cable network, is now 80 percent (80%)

15
16 the pleading stage, and indeed, despite its awareness that the
17 S.A.C. was then in preparation (see Page 1, footnote 1 to PAC-
18 10's Memorandum), it is apparent that PAC-10 deems the
19 allegations of the Complaint to be irrelevant to its argument.
20 Except to the extent that specific allegations have been placed
21 in issue by PAC-10's "Material Facts", the allegations are
22 without dispute for the purpose of this motion. Indeed,
23 Defendant asserts only four undisputed material facts in support
24 of its motion. Further, since the motions of defendants
25 CapCities/ABC, Inc., ABC Sports, Inc. ("ABC") and ESPN, Inc.
26 ("ESPN") and Prime Ticket Network ("PTN") are alternatively
27 Motions for Summary Judgment or Motions to Dismiss to the extent
28 that those motion's Statements of Material Fact do not place
these allegations in issue, the allegations of the S.A.C. are
deemed to be true. N.L. Industries, Inc. v. Kaplan (9th Cir.
1986), 792 F2d 896, 898. Finally, given the pendency of this
motion, discovery has, thus far been limited to the issues raised
by PAC-10's motion. Thus, if PAC-10 now seeks to dispute these
allegations, the Court should, pursuant to Federal Rule of Civil
Procedure 56, deny the instant motion in order to permit
discovery on any issue PAC-10 belatedly puts into dispute.

1 owned, and therefore controlled, by ABC, which has allowed ABC to
2 expand and extend its dominance and control over the market for
3 the live telecasting and cablecasting of live college football
4 games. (S.A.C. ¶37; please see fn. 5, supra)

5 There are 107 Division I-A institutions; and, of these,
6 a total of 87, or eighty-one and one-third percent (81.3%), of
7 said institutions are members of and represented by three (3)
8 organizations: (a) Defendant PAC-10 (10); (b) Non-
9 defendant/co-conspirator BIG-10 Conference (10); and, (c) Non-
10 defendant/co-conspirator CFA (67).⁷ (S.A.C. ¶38)

11 The current CFA contracts with ABC and ESPN provide
12 that ABC, and its subsidiary ESPN, have a right of first refusal
13 for games played by CFA members. Non-defendant/co-conspirator
14 CFA's contracts with Defendants ABC and ESPN provide that ABC and
15 ESPN have the exclusive right to broadcast or cable carry CFA
16 member contests commencing between the hours of approximately
17 12:30 p.m. through 7:00 p.m. on Saturdays during the collegiate
18 football season and that other CFA members are prohibited from
19 broadcasting games opposite ABC broadcasts and ESPN cablecasts.
20 (S.A.C. ¶40)

21 In or about 1986 PAC-10/Big-10 and ABC entered into a
22 television contract and subsequently, in 1989, Defendant ABC
23 contracted with Defendant PAC-10 and non-defendant/co-conspirator
24 BIG-10 for an extension, through the 1996 season, of their

25 ⁷ Non-defendant/co-conspirator CFA has contracts with CAP
26 CITIES/ABC and its subsidiary, Defendant ESPN, which
27 cover the 1991-1995 seasons and which will pay the CFA
28 institutions \$300 million (\$175 million for ABC and
\$125 million for ESPN). (S.A.C. ¶39)